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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1314

International Brotherhood of Boilermakers,
Iron Shipbuilders, Blacksmiths, Forgers
And Helpers, Petitioner

v.

E. T. Braswell, Respondent

BRIEF OF RESPONDENT IN ANSWER TO PETITION FOR CERTIORARI

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SUMMARY OF ARGUMENT

A. UNLAWFULNESS OF EXPULSION

Respondent was unlawfully expelled from the union by the trial board since they found him guilty of a charge without any evidence to support this charge. He was also found guilty of another section of the union by–laws which was a broad and general section which did not charge any specific offense but was a catch all provision. Finding him guilty of either or both of these sections denied him a fair hearing as required by Section 101 (a) (5) of LMRDA.

Respondent further submits that he was denied a fair hearing by the trial board due to the fact that his punishment was grossly excessive for the offense he might have been guilty of if he had been properly charged.

For these separate and several reasons, respondents expulsion was unlawful since it deprived him of a fair hearing within the meaning of LMRDA.

B. PUNITIVE DAMAGES

Respondent contends that punitive damages are allowable under LMRDA when a member is wrongfully disciplined with malice or wanton indifference to his rights. This is within the broad wording of the act "as may be appropriate." It fulfills the intentions of congress to prevent wrongful discipline by providing a deterrent when such wrongful discipline is used with malice or wanton indifference as opposed to an honest mistake.

LMRDA creats a cause of action for tortious conduct.

Surely congress was not ignorant of common law torts when they created this cause of action for "such relief as may be appropriate." Punitive damages are appropriate when a tort is accompanied with malice or wanton indifference to the rights of another.

The use of punitive damages is well grounded in this type of action. There are very few federal cases on this point but many states have used punitive damages when they have recognized similar causes of action.

Punitive damages are also necessary for wrongful discipline other than expulsion where compensatory damages would be difficult to prove. To deny them would destroy the purpose of the act in creating a remedy for wrongful discipline.

Strong reasons of public policy demand that punitive damages be allowed under LMRDA to promote the freedom of individual union members within the organizations and protect the democracy of such organizations. To deny this type of damage would impair the democracy of labor organizations and subject the individual members to petty tyrants thereby weakening the labor movement in this country.

Petitioners argument against punitive damages asserting that they will weaken the structure of unions and have a bad "Interrorem" effect is unreal. Unions need not fear punitive damages so long as they reasonably attempt to afford their members fair disciplinary proceedures. Should jury verdicts be excessive or prejudicial, trial courts and appellate courts have authority to reduce these verdicts.

The evidence in the instant case was ample that the petitioner wrongfully expelled the respondent with malice or

wanton indifference to his rights and therefore the District Judge properly instructed the jury on punitive damages.

REASONS FOR DENYING WRIT

1. The decisions by the court below represent a fulfillment of the legislative intent and substantially strengthen the life of labor organizations throughout the country.

2. The decisions by the courts below on the issue of punitive damages fulfilled the intent of congress and are in harmony with the principles of this court in establishing democracy and the freedom of the individual.

3. The decisions of the courts below on the issue of punitive damages do not conflict with the decisions of this Honorable Court nor are they in conflict with any Circuit Court of Appeals decision, but follow traditions and principles of old established law.

ARGUMENT OF RESPONDENT

1. A. UNLAWFULNESS OF THE EXPULSION

Petitioner argues the question of the lawfulness of the expulsion which seems to cover questions 1 and 2 in the section of his brief marked Questions Presented. In the questions presented section, the petitioner questions 1, whether or not a court may substitute its interpretation of a unions constitutional and by–law provisions for the interpretation of duly designated union members and officers and 2, whether the court may substitute its evaluation of the evidence submitted to duly designated union members and officers of the union.

Respondent contends that these questions do not apply to what the trial court did in the instant case. Respondent contends that the court did not substitute its judgment unreasonably for that of the trial board. The trial court took the position that it could not retry the issues before the trial board and that it could only examine the transcripts taken before the union trial board as an Appellate Court would examine the evidence of a trial court below, i.e. to see if there was evidence to support the charge.

Section 101 (a) (5) of the Labor Management Reporting and Disclosure Act requires this. That section is set out as follows:

> Safeguards Against Improper Disciplinary Action – No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A)

> served with written specific charges: (B) given a reasonable time to prepare his defense: (C) afforded a full and fair hearing.

Section 101 (a) (5) (C) demands that a trial court examine the proceedings of the board to see if there was any substantive evidence to support the charge. The requirement in the above section of a full and fair hearing includes the fundamentals of due process of law that a person charged with an offense cannot be found guilty unless there is some evidence before the trial board to support a finding of guilt under the charge. This is what the trial court did. (R295,296)

The trial judge's ruling is well supported by decisions of other courts under the Labor Management Reporting and Disclosure Act. The other cases which have so ruled are the following, Phillips v. Teamsters Local 560, 209 F. Supp. 768; International Association of Machinists, Etc. Et al v. Freedman, 252 F. 2d 846; and Vars v. Boilermakers, 320 F. 2d 576. These decisions primarily held that the trial court could not set aside a finding by a union trial board if there was evidence to support its verdict. However these courts also held that implicit in the requirement of the full and fair hearing is the requirement that there be some evidence to support the charge that the individual was found guilty of. The Second Circuit Court of Appeals expressed the doctrine of review in Vars v. Boilermakers, 320 F. 2d 576 as follows:

> "Both parties agree that in an action of this kind, judicial review of the findings of the Union tribunal is limited in nature. . . However, implicit in the requirement of a full and fair hearing is the requirement that there be some evidence to support the charges made. Cf. Madden v. Atkins, 4 N.Y. 2d 283, 174 N.Y.S. 2d 633, 161 N.E. 2d 73, 74 A.L.R.

> 2d 772, 41 LRRM 2491 (1958). If Section 101 (5) is to provide any measure of protection for the individual union member who finds himself beseiged by the full power of the International Union, some review is necessary in order to protect such members from obvious abuses. This is especially true in cases such as this where the hearing examiner is not an independent figure divorced from union controversies but is an officer of the International Union. Thus, although the courts may be without power to review matters of credibility or of strict weight of the evidence, a close reading of the record is justified to insure that the findings are not without any foundation in the evidence."

The ruling of the trial court in the instant case we submit follows this doctrine.

Respondent further submits that the union trial board brought in a general verdict of guilty under both charges. (R. 297) This being the case, it is presumed that the verdict of guilt referred to both sections which the respondent was charged with. It is worthy to note that under Article XIII, Section 1 of the Subordinate Lodge Constitution expulsion is mandatory. Under the general verdict of the union trial board the respondent was found guilty of this section.

The other charge which the respondent was charged with before the union trial board was Article XII, Section 1 of the by–laws which is set out on page 5 of the petitioners brief. It is worthy to note that the trial court did not rule on the question of whether or not the respondent could have been found guilty under the evidence before the trial board under

the charge brought under Article XII, Section 1 of the by-laws. (R. 296) However the Court of Appeals did rule that the respondent could not have been guilty under this section too. Respondent submits that the Court of Appeals was correct in so ruling. Article XII, Section 1 seems to be a catch all article. It would be a violation of a full and fair hearing as required under the LMRDA to find a member guilty under such a catch all provision. A "Union cannot discipline its members except for offenses stated in its constitution and by-laws and * * * courts lack the power to recognize "implied offenses" and thereby rewrite the unions constitution." Simons v. Local 713, 350 F. 2d 1012 (Fourth Cir., 1965)"

However even if this court should not agree with the Circuit Court of Appeals conclusion of a finding of guilt under Article XII, Section 1 would violate the act, it would not be sufficient reason to grant certiorari since the general finding of guilt referred to Article XIII, Section 1 and there certainly was not any evidence to support this charge.

Article XIII, Section 1, clearly refers to someone engaging in some sort of activity of sedition against the union. Someone who would be working to cause a conspiracy to dissolve the union. This section cannot in anyway be construed to cover an offense when one of the members becomes involved in a personal fight with one of the officers of the union.

Your respondent submits further to this Honorable Court that in effect, the union trial board did the same as if a person were indicted under a criminal charge of rape, the evidence proved him guilty of only a simple assault, but yet the trial court convicted him of the crime of rape. This is exactly what the union trial board did when they found the respondent guilty under Article XIII, Section 1 of the

Subordinate Lodge By–laws.

Therefore the respondent contends that his expulsion from the union was unlawful under the meaning of Section 101 (A) (5).

Petitioner goes into great dissertation in his brief concerning his interpretation of the history of the Labor Management Reporting and Disclosure Act. It takes the position that the trial court and the Circuit Court of Appeals decided to retry the issues that were presented before the trial board. The evidence indicates otherwise. The transcript of the trial court shows that the trial judge did not do this. That he merely interpreted the proceedings of the trial board to see if there was substantive evidence to support the charge of guilt. The Court of Appeals did not do this either but found as the trial court did that there was no substantive evidence to support the charges.

Whatever the legislative history of the act is, the meaning of a "full and fair hearing is definite." No one can call a hearing "fair" if there is no evidence to support a charge of guilt. Perhaps if the evidence had been slight to support such a charge, even if not overwhelming, this would have at least supported the charge of guilt. However there was no evidence before the board to support the charge under Article XIII, Section 1 of the Subordinate Lodge Constitution.

Respondent does not contend that Braswell should not have been disciplined for his action in striking the business agent of the union. Of course a labor union must exercise discipline amoung its members in some manner in order to preserve order and to accomplish its aims the same as any other organization. However, in the instant case, the respondent was charged with and found guilty of something which did not apply to his offense.

Respondent would go further than either the District Court or Court of Appeals. I contend that it would be a violation of a full and fair hearing to expel him from the union even if he had been properly charged with charges which would have conformed to the evidence of his act. The harshest disciplinary action which a union could meet out is expulsion from its membership. In criminal law it would be likened to the death penalty. The evidence before the trial court indicates that expulsion from the union effectively means termination from the trade since it is necessary to belong to the union in order to effectively find work. (R. 194, Dobsons testimony as to the importance of being a member of the Boilermakers Union to find work in the trade as well as R. 210–211 testimony by Mr. Hardeman, a boilermaker wno was also expelled in these proceedings).

We could not say in criminal law that it would be a full and fair hearing to give someone the death penalty, or twenty years in the penitentiary for running a red light. The punishment does not fit the crime and it is therefore a violation of fundamental due process. So too, the requirement of a full and fair hearing, required fundamental due process. Striking a business agent in a personal fight is surely not such an offense that expulsion would fit the crime. Therefore the respondent contends that the expulsion of Mr. Braswell in the instant case was unlawful and a violation of the requirement of a full and fair hearing for the separate and several reasons heretofore set forth.

B. PUNITIVE DAMAGES UNDER L.M.R.D.A.

Respondent submits that punitive damages are recoverable under the L.M.R.D.A. when the evidence shows malice or reckless or wanton indifference to the rights of the member wrongfully disciplined. The pertinent parts of Title 29,

Section 412 relative to this are as follows:

> "Any person whose rights secured by the provisions of this sub–chapter have been infringed by any violation of this sub–chapter may bring a civil action in a District Court of the United States for such relief (including injunctions) as may be appropriate." (italics added)

The above quoted section does not rule out punitive damages as an element of damages in such a suit brought under the Landrum–Griffith Act. I submit that the question of "relief as may be appropriate" referred to in this sub–chapter also includes punitive damages. On the trial of a case, if it appears that the action of the union was wilful, or wanton, then punitive damages would be appropriate.

The purpose of the act is to protect the rights of union members from wrongful discipline. In order to do this punitive damages are certainly necessary and appropriate. I further submit that protection for wrongful discipline, would also imply punishment for wilful wrongful discipline. I therefore submit, that if the evidence warrants, this section would allow the plaintiff to be entitled to punitive damages in such amount as the jury may assess in order to accomplish the aims and purposes of the act.

The classic reason for allowing punitive damages in any suit is the deterrent factor. The doctrine rests upon the theory that allowing punitive damages in a specific type of suit will discourage the type of wrongful action upon which suits are brought. To rule that punitive damages are not recoverable under the L.M.R.D.A. would be to thwart the intention of congress of protecting the individual laborer in the United States from wrongful discipline by his union.

I further submit to this Honorable Court that when congress passed L.M.R.D.A. it created an action for a tort. Traditionally the type of suit which is considered a tort is one wherein an individual or legal entity has wronged another individual or legal entity which does not arise out of contract. I submit further, that when congress created this cause of action it had in mind the doctrines that have developed in the common law regarding damages allowed in tort action. The essence of the concept of "tort" is that of a wrongful act. Surely wrongful discipline is a wrongful act. L.M.R.D.A. provides the remedy for such a wrongful act. To hold that punitive damages are not recoverable where malice or wanton indifference is present, is to hold that longstanding principals of tort are excluded under this act; to so hold would make a mockery of the old maxim, "for every wrong there is a remedy." To hold that congress did not intend punitive damages to be an element of damages where wantoness or wilfulness exists is to hold that the greatest law making body on earth is ignorant of the basic fundamentals of common law torts.

Respondent submits that the Fifth Circuit Court of Appeals in the instant case was the first Court of Appeals to rule on the question of punitive damages. Its holding was well grounded in the law however. There have been other cases which have interpreted the act as being one which would allow the recovery of punitive damages where malice or wanton indifference exist. Such a case is Farowitz v. Associated Musicians of Greater New York, Local 802, A.F. of M. 241 F. Supp 895. This decision, coming from a District Court held that punitive damages may be awarded if actual malice or reckless or wanton indifference to the rights of plaintiff existed.

Respondent admits that there are two District Court

decisions under L.M.R.D.A. where the District Court Judges narrowly construed the act and did not allow punitive damages. There are few cases which take up the issue of punitive damages. Respondent attributes this to the newness of the act.

However, there are many states which have statutes covering wrongful expulsion from unions and causes of action providing similar remedies to L.M.R.D.A. These states have ruled faborably on the issue of punitive damages. Appellee submits that although these state rulings are not binding on Federal Courts and are not interpretative of this act, they are certainly persuasive authority in deciding this issue.

One of the leading cases under this catagory is Fittipaldi, Et al. Vs. Legassie, Et al, New York Supreme Court, Appellate Division, Fourth Department, April 12, 1963, 53 LRRM 2175. This case stated the following on the issue of punitive damages:

> "Punitive damages may be awarded union members who were wrongfully suspended or expelled from union. Strong reasons of public policy promote use of punitive damages to deter union officials from conduct designed to suppress rights of members to fair and democratic hearings on legitimate disciplinary charges; imposition of such damages, when requisite elements of malice, gross fraud, wanton or wicked conduct, violence or oppression are present, serves to achieve deterrents they were designed to effect.
>
> "* * * Courts in other jurisdictions have

awarded exemplary damages for wrongful expulsion or suspension. (See Manning v. Kennedy, 320 Ill. App. 11, 49 N.E. 2d 658; Taxi Cab Drivers Local Union No. 889 v. Pittman, 322 P. 2d 159, 41 LRRM 2045 Harper v. Gribble, 143 Colo. 502, 355 P. 2d 526, 46 LRRM 2860; St. Louis S. W. Ry. Co. of Texas v. Thompson, 113 S. W. 144."

Certainly these principals apply to the meaning and purposes of L.M.R.D.A. and should be applied. The policy of L.M.R.D.A. is to protect the union members from wrongful expulsion or other forms of wrongful discipline. It would be unreasonable to say that congress did not intend for the courts to use all in their power to protect union members from this sort of conduct. Respondent submits that to exclude punitive damages as an element of damage under L.M.R.D.A. would merely lessen the deterrent for unions from wrongfully disciplining their members. The result of this would be more wrongful discipline, and therefore, more useless litigation cluttering up our courts. Surely, this court does not want this result. This court surely wants to prevent this type of action, rather than allow it to continue and force illegally disciplined members into the courts for address. Respondent submits that punitive damages are necessary in this type of action in order to protect not only the respondent's rights but further to protect the rights of all union members wherever they may be.

Respondent further submits to this Honorable Court that the essence of the L.M.R.D.A. is wrongful discipline of any type. In the instant case, the wrongful discipline administered was the wrongful expulsion of the respondent from his union. It is easy to show loss requiring compensatory

damages from discipline of this type. However, respondent further submits that there are other types of wrongful disci; pline which labor unions may bring against their members under which compensatory damages may not be easily shown. Suppose a member is wrongfully disciplined and placed in a catagory where he could not run for office in the union although he can still work at his trade. Such a wrongfully disciplined member could show very little in the way of compensatory loss. He might attempt to show that he would have run for an office in the union. It is purely speculative as to whether or not he would have run. It is also speculative as to whether or not he would have been elected. So he could not seek compensatory damages for the loss of the right to run for office. Respondent submits that in such a case as this the only appropriate relief could be administered in the form of punitive damages for wrongful discipline. To deny him punitive damages in such a case would leave him with no remedy at all under the act.

Petitioner, in his argument on punitive damages again goes into a discussion of his interpretation of the legislative history of the act. He cites committee reports on the Kennedy–Erwin Bill, the Kuchel Substitute, the McClellan Bill of Rights as well as Senator Goldwater and other senators. Respondent submits that these particular bills were not passed and that it was the Landrum–Griffith Bill that was passed. Respondent further submits that whatever individual congressmen or senators thought of this particular bill does not describe fully the intent of congress as a whole. There are over four hundred members in the House of Representatives. There are one hundred members of the Senate. To attempt to digest the "intent of the legislature" from such a large body by samplings of statements from individual senators or congressmen is certainly foolhardy. The intent of congress can best be determined by the fair

and plain meaning of the act itself, by the purposes for which the act was passed and by the common law doctrines which have applied to other tort actions and to similar causes of action in the several states that have legislated against this type of wrongful act.

Respondent further submits that it is necessary to allow punitive damages under this act to protect the individual laborer in the United States. In the beginning, when the labor movement first started in this country, the individual laborer's big problem was exploitation by management. He formed labor unions to institute collective bargaining as a whole in order to protect himself from the wrongful acts of his employer. Today his greatest threat is not from management. Today his greatest threat has been from the arbitrary discipline of little "labor barons" in his organization.

A labor union is an organization like many others. In the past they have been run similarly to the military in the sense that officers must back up their sergeants. As a consequence, in many locals, business agents have come into power and maintained themselves in power by favoring various individuals in the local. When finding disgruntled members in such a local, such business agents and officers have been able to dispose of threats of opposition when elections come around again by wrongfully disciplining these members and forcing them out. The labor union has backed up this wrongful discipline in order to maintain its structure of power through the business agent and officers of the Locals.

To deny certiorari in this case is to liberate and free the individual member of labor unions of the United States. No longer will such situations exist where business agents and officers can wrongfully discipline members in order to keep

them in line. Labor unions will have to become more democratic and the individual laborer will then know that he can speak out in his local without fear of recrimination. The democracy and the progression of the labor movement demands that this court affirm the position of the Fifth Circuit Court of Appeals on the issue of punitive damages.

Petitioner further contends that the contention that punitive damages should not be awarded under the L.M.R.D.A. on the grounds that such a doctrine would impede or destroy the labor organizations of this country is patently unreal. Labor organizations today are big business. The particular union involved is a large entity likened to General Motors. To say that punitive damages would destroy the petitioner is certainly ridiculous.

It is well to remember that courts have control over the measure of damages. Petitioner suggests in its brief that strong unions would suffer from too great assessments because of their size. The small unions would be destroyed. It is traditional in tort actions, where damages are allowed, that the trial court and the Appellate Court can reduce awards when they are made excessively. If such could come to pass as petitioner contends, the trial courts and Appellate Courts could certainly reduce any excessive awards under the doctrine of punitive damages. To rule that punitive damages are available under the L.M.R.D.A. would not, as petitioner contends, arm disputants with threats which could adversely affect the functioning and stability of labor organizations. They would be strengthened by maintaining the democracy and freedom of their individual members.

It is well to be remembered too that such damages would only be available when two conditions are met: i.e.1) wrongful discipline on the part of the union and 2) accompanied with malice or wanton indifference to the disciplined parties

rights. If the labor union runs itself democratically and if they protect their members from such wrongful discipline, surely they need not fear the threat of punitive damages as described by petitioner in his brief.

Petitioner further contends that the availability of punitive damages produces a further danger in their "Interrorem" effect. Petitioner contends that disciplinary proceedings would be greatly impeded by such a doctrine. This is not true. Certainly the courts would recognize that disciplinary proceedings are necessary for labor organizations to function as well as any organization. It is well to remember that as long as the union grants its members a full and fair hearing and does not wrongfully discipline them with malice or wanton indifference that they need not fear punitive damages.

It is well known that labor unions have their own general counsel and legal departments the same as large corporations. It is also well known that each local retains an attorney to represent it and keeps him on a retainer for legal advise. Equipped with such legal talent, it is inconceivable that any union which desires to conduct its disciplinary matters fairly and without malice or wanton indifference to its members should fear disciplining its members when needed. Such legal talent could surely prevent the pitfall of wrongful discipline accompanied with malice or wanton indifference to their members.

The argument of the petitioner as to the "Interrorem" effect of this doctrine is certainly unreal. At most it is merely an admission of the respondents contention that punitive damages are necessary as a deterrent effect for wrongful discipline accompanied with malice or wanton indifference to the rights of the members of labor unions.

Petitioner in his brief further takes the position that congress has long had a policy in the labor field of denying punitive damages. Petitioner cites many cases which were decided under the National Labor Relations Act. The nature and purpose of the National Labor Relations Act are entirely different from the nature and purposes of L.M.R.D.A. The Taft Hartley Act expressly states that the aggrieved party shall recover the "damages by him sustained." Of course an individual cannot sustain punitive damages. The language of L.M.R.D.A. is entirely different from that of Taft Hartley.

In addition to this, Taft Hartley was set up to be administered by the National Labor Relations Board. It did not come directly into the Federal District Court and therefore did not enter into the field of tort and encompass it with all of its common law doctrines as the cause of action created by L.M.R.D.A. Respondent submits that because of the differences in the wording of these two individual acts, and because of the differences in their background in the fact that L.M.R.D.A. creates a remedy for a tort type action, that the Taft Hartley Act and the suits which petitioner uses as precedent are no precedent when deciding a case under L.M.R.D.A.

Appellant further cites various cases to the effect that damages for emotional distress (International Brotherhood of Boilermakers, Ironship Builders, Blacksmiths, Forgers and Helpers, AF of L – CIO, Et al v. Rafferty, Et al, 348 F. 2d 307), and damages for attorneys fees are not recoverable under L.M.R.D.A. Traditionally, Attorneys fees are not recoverable in tort actions under the common law. The decision in Rafferty was narrowly stated to cover only damages for emotional distress. These cases are certainly not precedent on the question of punitive damages. They decide merely the questions before them, i.e. other damages besides puni-

tive damages.

1. C. AT THE TRIAL OF THIS CAUSE THERE WAS CERTAINLY EVIDENCE TO SHOW MALICE BY THE DEFENDANT AND WANTON DISREGARD FOR THE RESPONDENT'S RIGHTS.

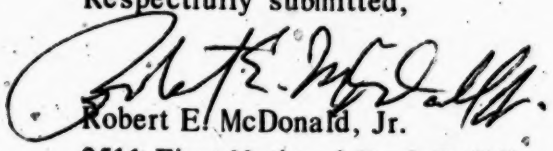
Respondent submits to this Honorable court that it was decided as a matter of law that there was no evidence to support the finding of guilt under Article XIII, Section 1, of the Subordinate Lodge Constitution. The plain meaning of this article should indicate to any reasonable man that the actions of the respondent, as shown by the evidence before the board would not make him guilty of such a charge. Respondent further submits to this Honorable Court that this defendant had legal talent of retained counsel for the local and general counsel employed by the International which surely could have seen that the finding of guilt was not proper under this section.

This being so, the only conclusion that a reasonable man could make was that the union, acting through its agents and officers wrongfully found the defendant guilty of Article XIII, Section 1, and by doing so, made his expulsion mandatory. That this union knew from the plain meaning of said article that respondent should not have been found guilty as charged. That knowing that it had wrongfully done this act, it was therefore guilty of malice. Therefore respondent submits that there is ample evidence that the petitioner was guilty of malicious conduct or wanton indifference to the rights of respondent when it found him guilty of the charges under Article XIII, Section 1 of the Subordinate Lodge Constitution.

CONCLUSION

For the fact that the rulings of the District Court and Fifth Circuit Court of Appeals are well grounded in the law and not a radical departure from accepted principals of law, the petition for Writ of Certiorari should be denied and appropriate damages under Rule 54 should be assessed against the petitioner together with interest at the rate of six per cent per annum from the date of judgment.

Respectfully submitted,



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